



UNIVERSITY OF TORONTO
FACULTY OF LAW



ADMINISTRATIVE LAW

LAW 202H1F

Fall 2011

Professor Colleen M. Flood

Volume II

FACULTY OF LAW
UNIVERSITY OF TORONTO

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ADMINISTRATIVE LAW

LAW 202H1F

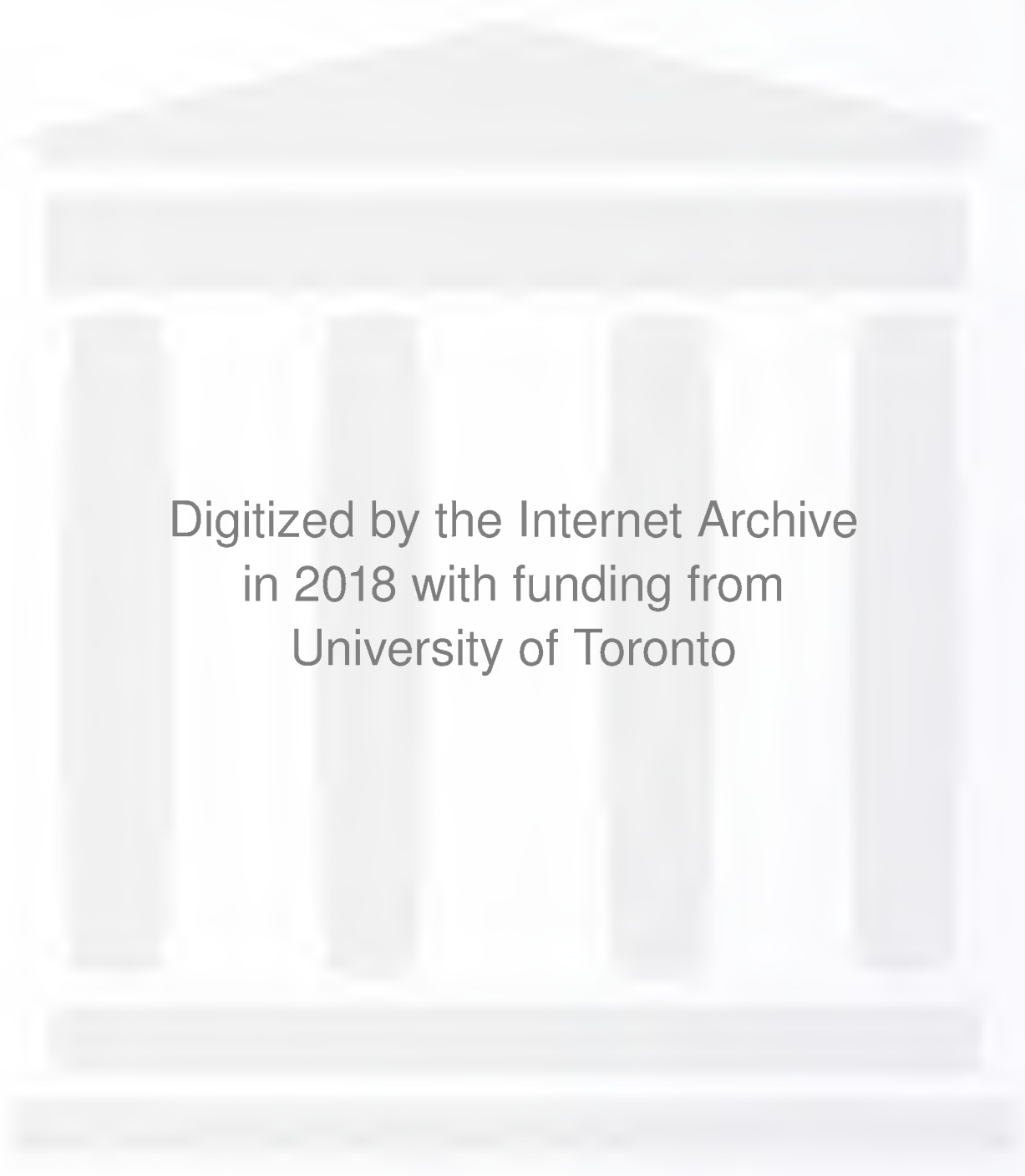
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September-December 2011
4.10-6.00 pm
Monday/Wednesday

Office hours: Email to schedule a time; drop by on Mondays/Tuesdays/Wednesdays when I am likely to be in the office.

SYLLABUS

Administrative Law

[202H1F]

Materials:

- Colleen M. Flood & Lorne Sossin, eds, *Administrative Law in Context* (Toronto: Emond Montgomery Publications Ltd, 2008) [Admin Law in Context].
- Administrative Law in Context Companion Website <<http://www.emp.ca/index.php/administrative-law-in-context-companion-website>>.
- Supplementary Casebook available at the UofT Law bookstore (alternatively, students can access all of these cases on Blackboard).
- Additional electronic materials will be posted on Blackboard. You will have to go to Blackboard for these readings.

Additional Reading:

- Sara Blake, *Administrative Law in Canada*, 4th ed. (Markham: Butterworths, 2006).
- David J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (3 volumes) (Toronto: Canvasback, 2009-) (a loose-leaf service).
- Gus Van Harten, Gerald Heckman and David J. Mullan, *Administrative Law: Cases, Text, and Materials*, 6th ed. (Toronto: Emond Montgomery, 2010).
- Rene Dussault and Louis Borgeat (Breen, tr.), *Administrative Law - A Treatise* (5 volumes), 2nd ed. (Toronto: Carswell, 1985-90).
- David Phillip Jones and Anne S. de Villars, *Principles of Administrative Law*, 5th ed. (Toronto: Carswell, 2009).
- Robert W. Macaulay, Q.C. and J.L.H. Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Carswell, 1988-) (a loose leaf service).
- David J. Mullan, *Administrative Law* (Toronto: Irwin, 2001) [An electronic copy of this book is available through the UofT Library website at <<http://simplelink.library.utoronto.ca/url.cfm/62055>>]
- Allan Manson and David Mullan, eds, *Commissions of inquiry : praise or reappraise?* (Toronto: Irwin Law, 2003. [An electronic copy of this book is available through the UofT Library website at <<http://simplelink.library.utoronto.ca/url.cfm/63861>>]

Evaluation

A final, 3-hour open-book examination (100%).

Students Living with Disabilities:

Students with permanent or temporary disabilities who would like to discuss classroom or evaluation accommodations are asked to come and see me as soon as possible.

Readings

Students are expected to have read all assigned readings, even if not specifically covered in class. The assigned reading MAY change to match the pace of the class and to enable closer focus on particular points.

INTRODUCTION: Baker, Rule of Law & Remedies

Wednesday September 7th

No class – please spend this time reading thorough the materials for the following week.

Monday September 12th + Wednesday September 14th

Colleen M. Flood, “Chapter 1: An Introduction (to the Effervescence of) Administrative Law”	Admin Law in Context pp 1-23.
Baker v. Canada (Minister of Citizenship and Immigration)	Supp. Vol I pp 1-29
Mary Liston, “Chapter 4: Governments in Miniature: The Rule of Law in the Administrative State”	Admin Law in Context pp 77-114.
Roncarelli v. Duplessis.....	Supp. Vol I pp 30-48
Brian Z. Tamanaha, “A Concise Guide to the Rule of Law” (September 2007) St John’s University, Legal Studies Research Paper.....	Supp. Vol I pp 49-68

Monday September 19th

I. Remedies

Cristie L. Ford, “Chapter 3: Dogs and Tails: Remedies in Administrative Law”	Admin Law in Context pp 45–77
McKinnon v. Ontario (Ministry of Correctional Services)	Supp. Vol I pp 69-83
Federal Courts Act, ss. 18. 27 and 28.....	Supp. Vol I pp 84-86
Judicial Review Procedure Act, all sections	Supp. Vol I pp 87-90
Friends of the Oldman River Society v. Canada (Minister of Transport)	Supp. Vol I pp 91-101
MiningWatch Canada v. Canada (Fisheries and Oceans)	Supp. Vol I pp 102-111

Other Recommended (But Not Required) Reading:

407 ETR Concession Co. Ltd. v. Ontario (Registrar of Motor Vehicles)	Posted on Blackboard
McDonald v. Anishinabek Police Service.....	Posted on Blackboard
Canada (Director of Investigations and Research, Competition Act) v. Southam -- paras 1-10, 21, 82-90 ...	Supp. Vol II pp 516-539

PART I: Procedural Fairness

Wednesday, September 21st + Monday, September 26th

I. The Threshold (Entitlement to Procedural Rights)

Grant Huscroft, "Chapter 5: The Duty of Fairness: From Nicholson to Baker and Beyond"
..... Admin Law in Context pp 115–129

A. The Traditional Doctrine

Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police
..... Supp. Vol I pp 112-120

B. The Threshold Today and Exceptions

Knight v. Board of Education of the Indian Head School Division No. 19 (Saskatchewan).....
..... Supp. Vol I pp 121-133

Homex Realty and Development Co. v. Wyoming (Village) Supp. Vol I pp 134-141

A.G. Canada v. Inuit Tapirisat of Canada Supp. Vol I pp 142-150

Dunsmuir v. New Brunswick -- paras. 1-10, 13-16, 25, 27-31, 77, 79-118 Supp. Vol I pp 151-198

Canada (Attorney General) v. Mavi Supp. Vol I pp 199-216

C. The Charter Threshold

Section 7, Charter of Rights and Freedoms Supp. Vol I p 217

Other Recommended (But Not Required) Reading:

Keen v. Canada (Attorney General) Posted on Blackboard

NO CLASS on Wednesday, September 28th (Rosh Hashanah)

Monday, October 3rd + Wednesday October 5th

Special Guest Lecture: Julie Maciura

II. Choice of Procedures

A. Introduction

Grant Huscroft, "Chapter 5: The Duty of Fairness: From Nicholson to Baker and Beyond"
..... Admin Law in Context pp 129-138

Baker v. Canada (Minister of Citizenship and Immigration) -- review paras 5-7, 11, 18-40, 43-44
..... Supp. Vol I pp 1-29

B. Specific Procedures

Freya Kristjanson and Leslie McIntosh, “Chapter 16: Advocacy Before Administrative Tribunals”
..... Admin Law in Context pp 411–428

1. Pre-Hearing issues - Notice, Discovery and Delay

Blencoe v. British Columbia (Human Rights Commission)..... Supp. Vol I pp 218-245

2. The Hearing – Oral Hearing, Right to Counsel, Disclosure, Official Notice, Evidence and Cross-Examination, and Duty to Give Reasons

Khan v. University of Ottawa Supp. Vol I pp 246-264

New Brunswick (Minister of Health and Community Services) v. G.(J.) -- headnote only
..... Supp. Vol I pp 265-269

Suresh v. Canada (Minister of Citizenship and Immigration) -- read headnote + paras 113-
128..... Supp. Vol I pp 270-281

Canada (Citizenship and Immigration) v. Shwaba Supp. Vol I pp 282-287

C. General Statutes About Procedures

Statutory Powers Procedure Act, RSO 1990, c S-22..... Supp. Vol I pp 288-307

J. Maciura & R. Steinecke, *The Annotated Statutory Powers Procedures Act*
..... Supp. Vol I pp 308-316

McIntosh v. College of Physicians and Surgeons of Ontario..... Supp. Vol I pp 317-326

Cotton v. College of Nurses of Ontario..... Supp. Vol I pp 327-337

Venneri v. College of Chiropractors of Ontario Supp. Vol I pp 338-346

Other Recommended (But Not Required) Reading:

Island Timberlands LP v. Canada (Foreign Affairs and International Trade).....Posted on Blackboard

Gough v. Canada (National Parole Board).....Posted on Blackboard

Singh v. Minister of Employment and ImmigrationPosted on Blackboard

Re Men's Clothing Manufacturers Association of Ontario et al. and Arthurs et al.Posted on Blackboard

Potter v. Halifax Regional School BoardPosted on Blackboard

Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine.....Posted on Blackboard

David Mullan, “Tribunals Imitating Courts – Foolish Flattery or Sound Policy?”Posted on Blackboard

Robert W. Macaulay & James L.H. Sprague, “Annotated SPPA” in *Practice and Procedure Before
Administrative Tribunals* (Toronto: Carswell, 1988- (looseleaf service)) at **vol. 4 §31.A**.....

..... Bora Laskin Law Library - call number KE5029 .A6 M33 v.4

“Chapter Four: The Level and Choice of Procedures” in Gus Van Harten, Gerald Heckman and David J.
Mullan, *Administrative Law: Cases, Text, and Materials*, 6th ed. (Toronto: Emond Montgomery,
2010) 255-440.Bora Laskin Law Library short-term loan

NO CLASS on Monday October 10th (Thanksgiving)

Wednesday, October 12th + Monday, October 17th

III. Constitutional Dimensions to Procedural Fairness

Evan Fox-Decent, "Chapter 7: The Charter and Administrative Law: Cross-Fertilization in Public Law" ...	Admin Law in Context pp 169-195
Singh v. Canada (Minister of Employment and Immigration).....	Supp. Vol II pp 347-362
Suresh v. Canada (Minister of Citizenship and Immigration).....	Supp. Vol I pp 270-281
Charkaoui v. Canada (Citizenship and Immigration).....	Supp. Vol II pp 363-380
Multani v. Commission scolaire Margeurite-Bourgeoys	Supp. Vol II pp 381-398
Tranchemontagne v. Ontario (Director, Disability Support Program).....	Supp. Vol II pp 399-413
R. v. Conway.....	Supp. Vol II pp 414-439
Jeffrey Simpson, "Our refugee system costs more than we think" The Globe and Mail (7 January 2004) A17.....	Supp. Vol II p 440

Other Recommended (But Not Required) Reading:

Slaight Communications Inc. v. Davidson.....	Posted on Blackboard
Lake v. Canada (Minister of Justice) -- paras 1-33, 42-49.....	Posted on Blackboard
Nova Scotia (Workers' Compensation Board) v. Martin.....	Posted on Blackboard

Wednesday, October 19th + Monday, October 24th

IV. Bias/Impartiality and Lack of Independence

Laverne Jacobs, "Chapter 6: Independence, Impartiality, and Bias"	Admin Law in Context pp 139-167
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A. Bias/Impartiality

Newfoundland Telephone Company v. Newfoundland (Board of Commissioners of Public Utilities)	Supp. Vol II pp 441-451
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B. Institutional Impartiality/Independence Tests

Ocean Port v. BC (General Manager, Liquor Control and Licensing Branch)	Supp. Vol II pp 452-462
Geza v. Canada (Minister of Citizenship and Immigration) (FC and FCA)	Supp. Vol II pp 463-477
Lorne Sossin, "Administrative Law at Pleasure: Keen v. Canada"	Supp. Vol II pp 478-489

C. Institutional Decision-Making

International Woodworkers of America v. Consolidated-Bathurst Packaging Ltd.....	Supp. Vol II pp 490-505
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Other Recommended (But Not Required) Reading:

Imperial Oil Ltd. v. Quebec.....	Posted on Blackboard
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Part II: Substantive Fairness

Wednesday, October 26th

V. The Standard of Review

Audrey Macklin, “Chapter 8: Standard of Review: The Pragmatic and Functional Test” Admin Law in Context pp 197–228

A. Determining the Standard or Level of Review/Scrutiny

Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp. Supp. Vol II pp 506-515

Canada (Director of Investigations and Research, Competition Act) v. Southam Supp. Vol II pp 516-539

Monday, October 31

B. Rearticulation of the Modern Standard

Sheila Wildeman, “Chapter 9: A Fine Romance? The Modern Standards of Review in Theory and Practice” Admin Law in Context pp 229–268

Pushpanathan v. Canada (Minister of Citizenship, Immigration) Supp. Vol II pp 540-550

Law Society of New Brunswick v. Ryan Supp. Vol II pp 551-557

NO CLASSES on Monday November 7th OR Wednesday November 9th
(Reading Week)

Wednesday, November 2nd + Monday, November 14th

C. Re-Rearticulation of the Modern Standard

Dunsmuir v. New Brunswick -- paras 1-12, 17-24, 26-76, 118-173 Supp. Vol I pp 151-198

Wednesday, November 16th

D. Post-Dunsmuir

Lake v. Canada (Minister of Justice) -- read headnote + paras 19-22, 26, 34-41, 49 Supp. Vol II pp 558-565

Canada (Citizenship and Immigration) v Khosa Supp. Vol II pp 566-609

Other Recommended (But Not Required) Reading:

Khosa v. Canada (Citizenship and Immigration) (IAD decision) Posted on Blackboard

Monday, November 21st + Wednesday, November 23rd

E. Applying the Standard to the Context

National Corn Growers Assn. v. Canada (Import Tribunal)	Supp. Vol II pp 610-639
Canada (Attorney General) v. Mossop	Supp. Vol II pp 640-658
Canada (Director of Investigations and Research, Competition Act) v. Southam (para 47 to end).....	Supp. Vol II pp 516-539
Clifford v. Ontario Municipal Employees Retirement System	Supp. Vol II pp 659-666
Air Canada v. Canada (Canadian Transportation Agency)	Supp. Vol II pp 667-670

Other Recommended (But Not Required) Reading:

Union des Employés de Service v. Bibeault	Posted on Blackboard
Canadian Pacific Railway Co. v. Canada (Transportation Agency)	Posted on Blackboard
Ahmed v. Ontario (Criminal Injuries Compensation Bd)	Posted on Blackboard
Lake v. Canada (Minister of Justice) -- paras 42-48	Supp. Vol II pp 558-565

Monday, November 28th

VI. The Misuse of Discretion / Configuring and Structuring Discretion

Geneviève Cartier, “Chapter 10: Keeping a Check on Discretion”	Admin Law in Context pp 269–288
Roncarelli v. Duplessis.....	Supp. Vol I pp 30-48
Baker v. Canada (Minister of Citizenship and Immigration) -- paras 13-17, 49-56, 62-68, 72-76.....	Supp. Vol I pp 1-29
Suresh v. Canada (Minister of Citizenship and Immigration).....	Supp. Vol II pp 671-676
Shell Canada Products Ltd. v. Vancouver (City)	Supp. Vol II pp 677-707
C.U.P.E. v. Ontario (Minister of Labour) (headnote)	Supp. Vol II pp 708-712

Wednesday, November 30th

REVIEW	Handout
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